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FILED

AUG 11 2008

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

LES REIL

ADR

E-FILING

10 UNITED STATES DISTRICT COURT

11 FOR THE

12 NORTHERN DISTRICT OF CALIFORNIA

13 C08 03816

14 RS

15 ARISTEO RIOS,

16 Plaintiff,

17 vs.

18 J. R. WEST, INC. dba JOHNNY ROCKETS,
 19 DOES 1-10,

20 Defendants

21 COMPLAINT FOR DAMAGES AND
 22 DEMAND FOR JURY TRIAL:

- 23 1) Violation of California Labor Code
 24 Section 510;
- 25 2) Violations of the Federal Fair Labor
 Standards Act;
- 1) Violation of California Business and
 Professions Code Section 17200; and
- 2) Violation of California Labor Code
 Section 226.7;
- 3) Violation of California Labor Code
 Section 201; and
- 4) Violation of California Labor Code
 Section 226.

26 NATURE OF CLAIM

- 27 1. This is an action on behalf of ARISTEO RIOS ("RIOS") who had been employed on an
 28 hourly basis by J.R. WEST. INC. dba JOHNNY ROCKETS, and DOES 1-10
 29 (collectively, "JOHNNY ROCKETS") during the four years prior to the filing of this
 30 Complaint, seeking damages arising from his employer's failure to pay overtime as
 31 required by the Fair Labor Standards Act and the California Wage Orders and statutes.
 32 Plaintiff seeks compensatory damages for unpaid wages under California Labor Code and
 33

1 Wage Orders, liquidated damages under 29 U.S.C. §216(b), damages for missed meal
2 premiums, waiting time penalties under California Labor Code § 203, damages for
3 inadequate pay statements under California Labor Code Section 226, and attorney's fees,
4 costs, pre judgment interest pursuant to California Labor Code § 1194(a) and 29 U.S.C. §
5 216(b), and restitution under California Unfair Trade Practices Act under California
6 Business and Professions Code § 17203.

7 **PARTIES**

8 2. At all times relevant herein, Plaintiff RIOS is an individual resident of Milpitas,
9 California.
10 3. At all times relevant herein, J.R. WEST, INC. is a corporate entity and the owner of a
11 JOHNNY ROCKETS in Milpitas, California.
12 4. Individual Defendants DOES 1-10, at all times relevant herein, are, according to
13 information and belief, owners, managers, directors, associates, related to, or employees
14 of JOHNNY ROCKETS having control over the Plaintiff's work condition and work
15 situation.

16 **GENERAL ALLEGATIONS**

17 5. At all times relevant herein, Plaintiff was an employee of Defendants, a restaurant doing
18 business in Milpitas, California.
19 6. Plaintiff was, according to information and belief, an employee of Defendants acting in
20 the normal course and scope of employment duties with Defendants.
21 7. During the course of Plaintiff's employment with Defendants, Plaintiff regularly worked
22 in excess of 8 hours per day and more than 40 hours per week.
23 8. Plaintiff was not paid the required one and one-half of regular rate for overtime hours
24 worked.
25

1 9. Plaintiff did not perform "exempt" duties in his position with Defendants and thus was
2 not subject to any exemption under the Fair Labor Standards Act, 29 CFR 541.112,
3 541.209 and 541.209. The Plaintiff was not even marginally responsible for management
4 or administrative functions, and his primary job did not require him to exercise
5 independent discretion and judgment or regularly require invention or imagination in a
6 recognized field of artistic endeavor more than fifty percent of his working time.

7 10. At no time during the Plaintiff's employment did Plaintiff maintain any professional
8 license with the state or practice any recognized profession, nor did Plaintiff exclusively
9 manage any division of Defendants where they customarily and regularly exercised
10 discretionary powers or perform services of management. Plaintiff did not directly
11 supervise any employees nor did he participate in the development of general
12 administrative policies of Defendants.

13 **COUNT ONE**

14 **VIOLATION OF CA LABOR CODE SECTION §510**

15 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

16 11. Plaintiff re-alleges and incorporates paragraphs 1-10 as if fully stated herein.

17 12. California Labor Code Section 501, applicable at all times relevant herein to Plaintiff's
18 employment by Defendants, provides that all employees are entitled to payment at the
19 rate of time and one half for hours in excess of 8 in one day, or 40 hours in one week, and
20 double time for hours in excess of 12 in one day.

21 13. During the course of employment with Defendants, Plaintiff regularly worked in excess
22 of 8 hours a day and 40 hours per week, however the Defendants knowingly and
23 willingly failed to pay Plaintiff overtime wages as required by law.

1 14. California Labor Code Section 1194 provides that it is unlawful for employers not to
2 make the required overtime payments identified in the preceding paragraph and that
3 employees not paid such payments can recover any monies owed by civil action.

4 15. Defendants therefore owe Plaintiff overtime wages not properly paid to Plaintiff in an
5 amount to be determined at trial.

6 16. Defendants have failed and refused and continue to fail and refuse to pay Plaintiff the
7 amount owed.

8 17. Defendants' failure to pay Plaintiff the required sum violates the provisions of Labor
9 Code Sections 510 and 1194 and is therefore unlawful.

10 18. Pursuant to Labor Code Section 1194(a), Plaintiff requests that the court award Plaintiff
11 reasonable attorney's fees and costs incurred by him in this action.

12 **COUNT TWO**

13 **VIOLATION OF THE FAIR LABOR STANDARDS ACT**

14 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

15 19. Plaintiff re-alleges and incorporates paragraphs 1-18 as if fully stated herein.

16 20. At all relevant times herein, Plaintiff's employment was subject to the provisions of the
17 Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 201, et seq. and
18 Plaintiff was an individual employee covered under FLSA.

19 21. The FLSA, 29 U.S.C. § 207 requires all employees to be paid overtime for work
20 performed in excess of forty hours per week, unless specifically exempted by the law.

21 22. Although Plaintiff was not so exempt during employment with Defendants, Defendants
22 knowingly caused and permitted Plaintiff to regularly work in excess of forty hours per
23 week without paying Plaintiff one and one half of Plaintiff's regular rate of pay.

24 23. By not paying overtime wages in compliance with the FLSA, Defendants violated
25 Plaintiff's rights under the FLSA.

1 24. As a direct and proximate result of Defendants' failure to pay proper wages under the
2 FLSA, Plaintiff incurred general damages in the form of lost overtime wages.

3 25. Defendants intentionally, with reckless disregard for their responsibilities under the
4 FLSA, and without good cause, failed to pay Plaintiff proper wages, and thus Defendants
5 are liable to Plaintiff for liquidated damages in an amount equal to lost overtime wages,
6 pursuant to 29 U.S.C. § 216(b) of the FLSA.

7 26. Defendants therefore owe Plaintiff overtime not properly paid to Plaintiff, in an amount
8 to be determined at trial.

9 27. Plaintiff was required to retain legal assistance in order to bring this action and, as such,
10 is entitled to an award of reasonable attorney's fees pursuant to 29 U.S.C. § 216(b) of the
11 FLSA.

12 **COUNT THREE**

13 **VIOLATION OF CA LABOR CODE § 226.7**

14 **FAILURE TO PROVIDE MEAL PERIODS**

15 28. Plaintiff re-alleges and incorporates the allegations set forth in paragraphs 1-27 as if fully
16 restated hereinafter.

17 29. At all relevant times herein, Plaintiff's employment with Defendants was subject to the
18 provisions of California Labor Code § 226.7, which requires the employer to provide
19 employees a thirty-minute meal break for every five hours worked, unless expressly
20 exempted.

21 30. During Plaintiff's employment with Defendants, Plaintiff worked at least 5 hours a day,
22 and was not provided a meal period as required by law.

23 31. For each time that the Plaintiff was not provided the required meal period, the Plaintiff is
24 entitled to recover one additional hour of pay at each employee's regular rate of
25 compensation pursuant to California Labor Code section 226.7.

1 32. Plaintiff is therefore entitled to payment, in an amount to be proven at trial for additional
2 pay for each meal period that Defendants failed to provide.

3 **COUNT FOUR**

4 **VIOLAITON OF CA LABOR CODE SECTION 201**

5 **FAILURE TO PAY WAGES DUE AND "WAITING TIME" PENALTIES**

6 33. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-32 as if fully stated
7 herein.

8 34. At the time Plaintiff's employment with Defendants was terminated, Defendants owed
9 Plaintiff certain unpaid overtime wages in amounts previously alleged.

10 35. Failure to pay wages owed at an employee's termination as required by Labor Code §201
11 subjects the employer to the payment of a penalty equaling up to 30 days of wages, as
12 provided for in Labor Code § 203.

13 36. As of this date, Defendants have failed and refused, and continue to fail and refuse, to
14 pay the amount due, thus making Defendants liable to Plaintiff for penalties equal to
15 thirty (30) days wages, in an amount to be determined at trial.

16 37. Pursuant to Labor Code Section 218.6, Plaintiff requests that the court award interest on
17 all due and unpaid wages, at the legal rate specified by Civil Code Section 3289(b),
18 accruing from the date the wages were due and payable.

19 **COUNT FIVE**

20 **UNFAIR BUSINESS PRACTICES**

21 **BUSINESS AND PROFESSIONS CODE SECTION 17200**

22 38. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-37 as if fully stated
23 herein.

24 39. At all times relevant herein, Plaintiff's employment with Defendants was subject to the
25 California Labor Code and applicable Wage Orders promulgated by the California

1 Industrial Welfare Commission, which required all employees to be paid overtime for
2 work performed in excess of forty hours per week or eight hours per day, unless
3 specifically exempted by law.

4 40. At all times relevant herein, as the employer of Plaintiff, Defendants were subject to the
5 California Unfair Trade Practices Act (California Business and Professions Code §
6 §17000 et seq.), but failed to pay the Plaintiff overtime pay as required by applicable
7 California Labor Code and applicable Wage Orders.

8 41. During the period Plaintiff was employed with Defendants, Defendants failed to pay
9 Plaintiff legally required overtime pay to which he was legally entitled, with Defendants
10 keeping to themselves the amount which should have been paid to Plaintiff.

11 42. In doing so, Defendants violated California Unfair Trade Practices Act, Business and
12 Professions Code §17200, et seq. by committing acts prohibited by applicable California
13 Labor Code provisions, California Wage Orders, and the FLSA, thus giving them a
14 competitive advantage over other employers and businesses with whom Defendants were
15 in competition and who were in compliance with the law.

16 43. As a direct and proximate result of Defendants' violations and failure to pay the required
17 overtime pay, the Plaintiff's rights under the law were violated and the Plaintiff incurred
18 general damages in the form of unpaid wages in an amount to be determined at trial.

19 44. Defendants had been aware of the existence and requirements of the Unfair Trade
20 Practices Act and the requirements of State and Federal wage and hour laws, but
21 willfully, knowingly, and intentionally failed to pay the Plaintiff overtime pay due.

22 45. Plaintiff, having been illegally deprived of the overtime pay to which he was legally
23 entitled, herein seeks restitution of such wages pursuant to the Business and Professions
24 Code §17203 in an amount to be determined at trial.

25

COUNT SIX

VIOLATION OF CALIFORNIA LABOR CODE SECTION 226

INADEQUATE PAY STATEMENTS

46. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-45 as if fully stated herein.
47. California Labor Code Section 226 provides that all employers shall provide to employees accurate and complete wage statements including, but not limited to, an accurate and current statement of all rates paid for all regular and overtime hours worked during the pay-period, a complete and itemized statement of deductions, net wages earned, the dates for which payment is being made, any and all applicable piece rates, and the current address and name of the employer.
48. California Labor Code Section 226 further provides that any employee suffering injury due to a willful violation of the aforementioned obligations may collect the greater of either actual damages or \$50 for the first inadequate pay statement and \$100 for each inadequate statement thereafter.
49. During the course of Plaintiff's employment, Defendants consistently failed to provide Plaintiff with adequate pay statements as required by California Labor Code §226.
50. Defendants failed to provide such adequate statements willingly and with full knowledge of their obligations under Section 226.
51. Defendants' failure to provide such adequate statements has caused injury to the Plaintiff.
52. Plaintiff is therefore legally entitled to recover actual damages caused by Defendants' failure to provide proper records, in an amount to be determined at trial.
53. Plaintiff has incurred costs and fees in bringing this action and seeks to recover such costs under California Labor Code §226.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

54. For compensatory damages per CA Labor Code §1194 for unpaid overtime wages in an amount to be determined;
55. For liquidated damages per FLSA equal to unpaid overtime wages in an amount to be determined at trial;
56. For restitution of unpaid overtime pay pursuant to California Business and Professions Code §17203 in an amount to be determined at trial;
57. Damages for missed meal times in violation of California Labor Code §226.7 in an amount to be determined at trial;
58. For waiting time penalty damages of thirty days wages to Plaintiff, pursuant to California Labor Code § 203 in an amount to be determined at trial;
59. Damages and penalties for inadequate pay statements pursuant to California Labor Code Section 226 in an amount to be determined at trial;
60. For pre-judgment interest of 10% on the unpaid overtime compensation and unpaid salaries pursuant to California Labor Code §1194(a);
61. Plaintiff asks the court to award reasonable attorney's fees pursuant to California Labor Code §1194(a) and 29 U.S.C. §216(b) of the FLSA;
62. For costs of suit herein; and
63. For such other and further relief as the Court may deem appropriate.

Dated: July 18, 2008

By: /s/ Adam Wang
Adam Wang
Attorney for Plaintiff

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

I.(a) PLAINTIFFS

ARISTEO RIOS

DEFENDANTS

J. R. WEST, INC dba JOHNNY ROCKETS, DOES 1-10 ADR

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

Santa Clara

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Santa Clara

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Adam Wang
12 South First Street, Suite 613
San Jose, CA 95113

ATTORNEYS (IF KNOWN)

C 08 03816 RS

II. BASIS OF JURISDICTION (PLACE AN " " IN ONE BOX ONLY)

1 U.S. Government Plaintiff
 2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN " " IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Citizen of This State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF
Citizen of Another State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5
	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6

Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. ORIGIN (PLACE AN " " IN ONE BOX ONLY)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN " " IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal injury <input type="checkbox"/> Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
	PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empi.Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) 29 U.S.C. 201, et seq.

Wage & Hour --overtime violation

VII. REQUESTED IN CHECK IF THIS IS A CLASS ACTION DEMAND \$ CHECK YES only if demanded in complaint:
COMPLAINT: UNDER F.R.C.P. 23 JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE A " " IN ONE BOX ONLY) SAN FRANCISCO/OAKLAND SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

8/11/08

C 28